

D.T.E. 03-60

August 26, 2003

Proceeding by the Department of Telecommunications and Energy on its own Motion to Implement the Requirements of the Federal Communications Commission's Triennial Review Order Regarding Switching for Mass Market Customers.

VOTE AND ORDER TO OPEN PROCEEDING

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I. INTRODUCTION

On August 21, 2003, the Federal Communications Commission (“FCC”) released its Triennial Review Order,¹ in which the FCC revised its rules concerning incumbent local exchange carriers’ (“LECs”) obligations to make elements of their networks available on an unbundled basis to competing carriers. The FCC determined that state public utility commissions would have a substantial role in determining whether competing carriers would be “impaired” by lack of access to an incumbent LEC’s network elements.² To that end, the FCC has required state public utility commissions to conduct proceedings to determine the continued availability of certain unbundled network elements, taking into account market-specific variations, including considerations of customer class, geography, and service. Among other requirements contained in the FCC’s Triennial Review Order, state public utility commissions have nine months from the effective date of the Order³ to conduct a proceeding in

¹ Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98; and Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, FCC 03-36 (rel. August 21, 2003) (“Triennial Review Order”).

² According to the FCC, a competing carrier is “impaired” when lack of access to an incumbent LEC network element poses a barrier or barriers to entry, including operational and economic barriers, which are likely to make entry into a market uneconomic. Triennial Review Order at ¶ 84.

³ The effective date of the Triennial Review Order is thirty days after publication of the Order in the Federal Register. Id. at ¶ 830. The Department anticipates that publication will occur within the next few weeks.

which to determine, on a granular basis,⁴ whether switching for mass market customers (i.e., residential and small business customers) need continue to be offered as an unbundled element to competing carriers. See Triennial Review Order at ¶ 527.⁵

II. VOTE TO OPEN PROCEEDING

Accordingly, the Department votes to open a proceeding to implement the requirements of the FCC's Triennial Review Order.⁶ This proceeding is docketed as D.T.E. 03-60 and will inquire into the ability of competing carriers serving mass market customers to offer local service without access to Verizon New England, Inc. d/b/a Verizon Massachusetts' ("Verizon") switching facilities. This proceeding will be completed within nine months following the effective date of the FCC's Triennial Review Order.

⁴ As directed by the FCC, the Department's analysis will be "granular" in that we will take into account considerations related to customer classes, geography, and services. See id. at ¶ 118. In addition, when evaluating specific network elements, we will consider types and capacities of facilities. Id.

⁵ For the purposes of the Triennial Review Order, the FCC defines mass market and enterprise market according to the facilities required to serve them. As a general matter, mass market customers are those customers that can be economically served via DS0 loops, and enterprise customers are those served via DS1 and above, as well as those customers in density zone 1 of the top 50 metropolitan serving areas ("MSAs") that are served by four or more DS0 loops. As part of its investigation into local circuit switching, the Department must determine the point at which multi-line DS0 customers outside of density zone 1 become enterprise customers. See Triennial Review Order at ¶ 497 and n.1376.

⁶ The Department will address the FCC's directive in the Triennial Review Order to address the FCC's conclusion that switching for business customers served by high-capacity loops, such as DS-1, will no longer be unbundled based on a national finding of "no impairment" in a separate docket, D.T.E. 03-59.

Those interested in participating in the Department's proceeding in this docket may submit written comments on the scope, nature, and timing of the Department's inquiry in this proceeding. Written comments must be filed with the Secretary of the Department by 5:00 p.m. on September 16, 2003. The Department requests that those interested in participating in the Department's proceeding indicate in written comments whether this proceeding should be conducted as an "adjudicatory proceeding" as defined in G.L.c. 30A, § 1(1), or whether some other role for the Department is warranted, such as the Department's consultative role in our Section 271 Evaluation, D.T.E. 99-271.⁷ In addition, interested persons seeking to participate in the Department's proceeding must file a brief (1-2 pages) letter explaining with specificity their interest and the extent to which they would like to participate. Written requests to participate must be filed with the Secretary of the Department by 5:00 p.m. on September 16, 2003. Receipt of the written request by the Department – not mailing – constitutes filing and determines whether a request has been timely filed.

In addition, the Department requests that all comments and requests to participate be submitted by electronic mail to Paula.Foley@state.ma.us and dte.efiling@state.ma.us using one of the following methods: (1) by e-mail attachment; or (2) on a 3.5" disk, IBM-compatible format. The text of the e-mail must specify: (1) the docket number of the proceeding (D.T.E. 03-60), (2) the name of the person or company submitting the filing, and

⁷ In D.T.E. 99-271, the Department evaluated Verizon's compliance with the FCC's "14-point competitive checklist" contained in 47 U.S.C. § 271 and recommended to the FCC that Verizon be permitted entry into the in-region long distance market. See Evaluation of the Massachusetts Department of Telecommunications and Energy, CC Docket 00-176 (October 16, 2000).

(3) a brief descriptive title of the document. The electronic filing should also include the name, title, and phone number of a person to contact in the event of a question about the filing. Text responses should be written in either WordPerfect (naming the document with a “.wpd” suffix), in Microsoft Word (naming the document with a “.doc” suffix), or as an Adobe PDF file (naming the document with a “.pdf” suffix). Data or spreadsheet responses should be compatible with Microsoft Excel. All comments and requests to participate submitted in electronic format will be posted on the Department’s website:

<http://www.mass.gov.dpu>.

We will hold a procedural conference on September 25, 2003 at 11:00 a.m., at the Department’s offices, to establish a procedural schedule for the orderly conduct of this proceeding, and, if necessary, to further define the scope of the proceeding. Following issuance of this Vote and Order, the Secretary of the Department will publish the accompanying legal notice, and will also serve a copy of this Order on all parties to the Department’s UNE Rates Proceeding, D.T.E. 01-20.

III. ORDER

Accordingly, the Department

VOTES: To open a proceeding to implement the requirements of the Federal Communications Commission’s Triennial Review Order regarding switching for mass market customers; and it is

ORDERED: That written comments on the scope, nature, and timing of the Department’s inquiry shall be filed with the Secretary of the Department by 5:00 p.m. on September 16, 2003, and it is

FURTHER ORDERED: That written requests to participate in this proceeding shall be filed with the Secretary of the Department by 5:00 p.m. on September 16, 2003; and it is

FURTHER ORDERED: That a procedural conference in this proceeding will be held at 11:00 a.m. at the offices of the Department on September 25, 2003.

By Order of the Department,

_____/s/_____
Paul G. Afonso, Chairman

_____/s/_____
James Connelly, Commissioner

_____/s/_____
W. Robert Keating, Commissioner

_____/s/_____
Eugene J. Sullivan, Jr., Commissioner

_____/s/_____
Deirdre K. Manning, Commissioner